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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,709	10/01/2001	Felice Fragola	2865-360	7019
7590	10/24/2003		EXAMINER	
Nixon & Vanderhye 8th Floor 1100 North Glebe Road Arlington, VA 22201-4714			NGO, LIEN M	
			ART UNIT	PAPER NUMBER
			3727	
			DATE MAILED: 10/24/2003	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/937,709	FRAGOLA, FELICE
	Examiner LIEN TM NGO	Art Unit 3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 04 September 2003.

2a) This action is FINAL.                  2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-46 is/are pending in the application.

4a) Of the above claim(s) 19-36,38 and 39 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-18,37 and 40-46 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on 11 June 2003 is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

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#### **DETAILED ACTION**

1. Applicant's election with traverse of Species XI (fig. 18), claims 1-18, 37 and 40-46, in Paper No. 8 is acknowledged. The traversal is on the ground(s) that all of the species should be examined because the listed species possess unity of invention in that they are linked to from a single general inventive concept as pointed out in the response. However this is not found persuasive because the listed Species in the Restriction Requirement do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT rule 13.2, the species lack the same or corresponding special technical features for the reasons as clearly stated in the paragraph 3 of the Restriction Requirement. The features in claims 1- "an upper and ... direction" is just a common features in a generic claim for the listed patentably distinct species of claimed invention.

The requirement is still deemed proper and is therefore made FINAL.

#### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the washer in claim 18, the writing, the signs, protective film, the laser-marking in claims 40-42, 45 and 46 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

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A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

3. Claims 1-18, 37 and 40-16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. For example: "said supporting and sealing means comprise an upper and a lower support and sealing operatively joined together" is not described in the specification for the elected species XI (fig. 18).

In claim 41 and 42, the protective film is not described in the specification.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-12, 43 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murray (EP 532 367). Murray disclose, in fig. 7, a closure comprising substantially rigid supporting and sealing means 27, 31 and 35, a covering body 4 made by flexible and resilient material, and wherein the supporting and sealing means

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comprise and upper support 35 and a lower support 31 and sealing element 27 operatively joined together.

Murray does not disclose the covering body made by plastic material.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the covering body in Murray closure with plastic material as claimed. Since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

In regard to claims 43 and 44, the process limitations in product by process claims are not considered for patentability (see MPEP 2113).

6. Claims 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murray in view of Lauer et al. (6,221,415) and Mc'Teer et al. (6,455,424).

Murray does not disclose the closure comprising a barrier made by gold or glass.

It is well known in the art that a stopper closure comprising a barrier made of gold or glass, for example, Lauer et al teach a stopper closure comprising a barrier made of glass (see col. 16, lines 19-25 and 50-56), and Mc'Teer teaches a plug comprising barrier means with gold for reduce the possibility of the oxidation.

7. Claims 40, 45 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murray in view of Burns (5,710,184) or Taylor (4,812,317).

Murray does not teach writing on the closure.

Burns or Taylor teaches writing on the closure.

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Therefore, it would be obvious to one having ordinary skill in the art at the time the invention was made to provide printing on the Murray closure, as taught by Burn or Taylor, for provide information or decoration for the closure.

In regard to claims 45 and 46, the process limitations in product by process claims are not considered for patentability (see MPEP 2113).

8. Claims 41 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murray in view of Cook (6,202,878)

Murray does not teach a protective film on the closure.

Cook teaches, in col. 2 lines 31-35, a closure having a protective film.

Therefore, it would be obvious to one having ordinary skill in the art at the time the invention was made to provide protective film on the Murray closure, as taught by Cook, in order to prevent the reaction between the content of the container and the closure.

### ***Response to Arguments***

9. Applicant's arguments with respect to claims 1-18, 37 and 40-46 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LIEN TM NGO whose telephone number is 703-305-0294. The examiner can normally be reached on Monday through Friday from 8:30 AM -6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LEE YOUNG can be reached on 703-308-2572. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

Lien Ngo  
October 16, 2003

  
NATHAN J. NEWHOUSE  
PRIMARY EXAMINER  
10/20/03